



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1998

Ms. Julie Ross  
Haynes & Boone  
201 Main Street  
Suite 2200  
Fort Worth, Texas 76102-2126

OR98-3151

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120689.

The City of Coppell (the "city") received an open records request for certain records pertaining to IA 97-071, a particular internal affairs investigation conducted by the Coppell Police Department. You contend that the requested records may be withheld from the public pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance you have made the requisite showing for purposes of section 552.103 that the requested information relates to pending litigation that another former police officer, Lisa Andrus, has brought against the city. The city therefore may withhold these records at this time pursuant to section 552.103.<sup>1</sup>

In subsequent correspondence, the same requestor additionally seeks a copy of your October 12, 1998 brief to this office regarding this matter. You contend that portions of your brief constitute attorney work product for purposes of section 552.103. We have reviewed

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<sup>1</sup>In reaching this conclusion, however, we assume that the opposing party in the pending litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

the portions of your brief that you seek to withhold and agree that some of the information you have marked may be withheld pursuant to section 552.103.<sup>2</sup> We have indicated the portions that the city may withhold. The remaining portions of the brief must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker  
Assistant Attorney General  
Open Records Division

WMW/RWP/ch

Ref.: ID# 120689

Enclosures: Marked documents

cc: Mr. R. G. Harrell  
548 W. Oak Grove  
Coppell, Texas 75019  
(w/o enclosures)

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<sup>2</sup>We have also marked one small portion of your brief that the city must withhold pursuant to section 552.117(2) of the Government Code.